

*Malathion Control Act, No. 22 of 1985*

[Certified on 21st June, 1985]

L. D.-O. 36/79

AN ACT TO PROHIBIT THE POSSESSION, TRANSPORT, SALE AND USE OF MALATHION IN SRI LANKA BY UNAUTHORIZED INDIVIDUALS, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :-

1. This Act may be cited as the Malathion Control Act, No. 22 of 1985, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

**Short title and date of operation.**

2. The sole authority for the import of Malathion (hereinafter referred to as "the insecticide") shall be the State acting for the time being through the Director-General of Health Services (hereinafter referred to as "the Director-General").

**Sole authority for import of Malathion.**

3. No person other than persons duly authorized in writing by the Director-General for the purpose of the Anti-Malaria Campaign of the Department of Health Services shall have in his possession, transport, sell or use the insecticide.

**Restriction on possession, transport, sale and use of the insecticide.**

4. (1) The Director-General shall, unless otherwise provided for in this Act, be in charge of the general administration of this Act.

**Administration of the Act.**

(2) The Director-General may give such directions as he may deem necessary to any officer of his department regarding the execution and the enforcement of all or any of the provisions of this Act or regulations made thereunder, and every such officer to whom directions are so given shall comply with such directions.

(3) The Director-General may, with the approval of the Minister, delegate all or any of his powers, duties or functions under this Act to any subordinate officer by name or office and any such officer to whom any such powers, duties or functions are so delegated shall exercise, perform or discharge them subject to the general or special directions of the Director-General.

5. The Director-General may nominate any officer of the Anti-Malaria Campaign to be an Authorized Officer for the purposes of this Act.

**Authorized Officer.**

Powers of  
Authorized  
Officer.

6. (1) An Authorized Officer may, for the performance of his duties and the exercise of his powers-

- (a) at any reasonable time, enter any place, where he believes that the insecticide is prepared, packaged or stored, and examine and take samples thereof and also examine any material, implement, apparatus or other article that he believes is used for the preparation, packaging or storing of the insecticide ;
- (b) for the purpose of search, stop or detain any vehicle in which he believes that the insecticide is being transported, and search and examine and take samples of the insecticide ;
- (c) open and examine any receptacle or package that he believes to contain the insecticide ; or
- (d) seize and detain for such time as may be necessary the insecticide by means of or in relation to which he **believes** any provision of this Act or regulation made thereunder has been or is being contravened or violated.

(2) An Authorized Officer acting under this section shall, if so required, produce his authority.

(3) Where an Authorized *Officer acts* under subsection (1) he shall, as soon as may be convenient, inform the Director-General of such action and state the reasons for taking such action.

(4) No person shall obstruct any Authorized Officer acting in the exercise of his powers under this Act or regulations made thereunder.

(5) No person shall knowingly make any false or misleading statements either orally or in writing to any Authorized Officer engaged in the exercise of his powers under this Act or any regulations made thereunder,

(6) No person shall remove or otherwise interfere in any manner with the insecticide seized under this Act by an Authorized Officer without the authority of that officer.

(7) Any insecticide seized under this Act may, at the option of the Authorized Officer, be kept or stored in the building or place where it was seized or may at his discretion be removed to any other place.

7. (1) Where the insecticide in respect of which an offence has been committed is seized under this Act by an Authorized Officer and the Director-General is satisfied that there has been a contravention of any of the provisions of this Act or any regulations made thereunder and if the owner or the person in possession of such insecticide at the time of seizure consents in writing to the destruction or disposal in any other manner of such insecticide by the Director-General, such insecticide may be destroyed or disposed of in such manner as the Director-General may direct.

Procedure  
in respect  
of seized  
insecticide.

(2) Where the owner or the person in possession of the insecticide does not consent in writing to the destruction or disposal in any other manner of the insecticide, the Director-General-

(a) shall release the insecticide if the owner or the person in possession thereof satisfies the Director-General that he is authorized to possess transport, sell or use the insecticide ; or

(b) shall, forthwith, with notice to such owner or person in possession of the insecticide inform the Magistrate's Court having jurisdiction over the area in which the seizure was made, if such owner or person in possession of such insecticide does not satisfy the Director-General that he is authorized to possess, transport, sell or use the insecticide.

(3) On information furnished to the Magistrate's Court under subsection (2) (b) such Court shall—

(a) if, after trial, it finds that the owner or the person in possession of the insecticide is not authorized to possess, transport, sell or use such insecticide under the provisions of this Act, order that such insecticide be forfeited to the Director-General to be disposed of as the Court may direct ; or

(b) if, after trial, it finds that the owner or the person in possession of the insecticide is authorized to possess, transport, sell or use such insecticide under the provisions of this Act, order that such insecticide be released to such owner or person in possession.

8. (1) An Authorized Officer shall submit the insecticide seized by him or any portion thereof or any sample taken by him, unless destroyed under subsection (1) of section 7, to the Approved Analyst for analysis or examination,

Analysis.

(2) Where the Approved Analyst has made an analysis or examination of the insecticide submitted to him under subsection (1) he shall issue a certificate or report to the Director-General setting out in that certificate or report the results of his examination or analysis.

(3) For the purposes of this section the "Approved Analyst" includes an Additional Approved Analyst,

**Approved Analyst.**

9. (1) For the purposes of this Act or regulations made thereunder the Government Analyst shall be the Approved Analyst.

(2) Notwithstanding the provisions of subsection (1) the Director-General may approve in writing an Additional Approved Analyst for any administrative area of a local authority to perform such functions as are required to be performed by him under this Act.

(3) No person shall be approved as an Additional Approved Analyst unless he possesses the prescribed qualifications.

For purposes of sections 7 and 8 insecticide to include material used for its preparation.

10. For the purposes of sections 7 and 8 the insecticide shall include any material used for the preparation of such insecticide.

**Offences and penalties.**

11. Every person who contravenes or fails to comply with any of the provisions of this Act or regulations made thereunder shall be guilty of an **offence** and shall on conviction by a Magistrate be liable to a fine not exceeding one thousand rupees or to a term of imprisonment not exceeding six months or to both such **fine** and **imprisonment**.

Accused liable to be arrested without a warrant and to be tried by a Magistrate's Court.

12. Every person who commits an **offence** under this Act or any regulations made thereunder may be arrested without a warrant and every **offence** under this Act or any regulations made thereunder shall be **triable** by a Magistrate's Court.

Institution of proceedings.

13. (1) A prosecution for an **offence** under this Act or any regulations made thereunder shall not be instituted-

(a) except by an Authorized Officer ; and

(b) after the expiration of a period of six months from the date of detection of that **offence**.

(2) Where at any time during the trial of any offence under this Act or any regulations made thereunder, it appears to the Court that any person other than the accused had committed any offence under this Act or any regulations made thereunder, the Court may notwithstanding the provisions of subsection (1) or any other law, proceed against such person as though a prosecution had been instituted against that person and for such purpose shall have the power to alter, amend or substitute any charge in such proceedings.

14. (1) A document purporting to be a report or a certificate signed by an Approved Analyst or an Additional Approved Analyst upon any matter submitted to him for examination or analysis shall be prima facie proof of the facts stated therein unless rebutted.

**Report of  
Approved  
Analyst or  
Additional  
Approved  
Analyst.**

(2) Where a party against whom the report or the certificate referred to in subsection (1) is produced, requests that the Approved Analyst or Additional Approved Analyst, as the case may be, be summoned for cross-examination, the Court shall summon him :

Provided that if the Court is of the opinion that such witness has been summoned without sufficient reason, the Court may order the party making such request to pay the Court the expenses of summoning him.

(3) The report or the certificate referred to in subsection (1) shall not be received in evidence unless the party intending to produce it has given the party against whom it is intended to be produced a copy of the report or certificate and reasonable notice of his intention to produce it.

15. (1) Where a sample obtained by an Authorized Officer is required to be divided by him into parts, one of which shall be retained by him, the part retained by him shall be produced in court at the time of the institution of the prosecution in relation to that sample.

**Authorized  
Officer to  
produce  
before court  
the part of  
the sample  
retained  
by him.**

(2) The Magistrate may, on his own motion or upon application made in that behalf by the prosecution or by the accused, forward for analysis or examination the part of the sample produced in court under subsection (1) to the Approved Analyst or an Additional Approved Analyst other than an Analyst who has analysed or examined any other part of that sample.

(3) The Analyst to whom the part of the sample is forwarded under subsection (2) shall send his report or certificate to the court within twenty-eight days of the receipt by him of that part of the sample.

(4) The expense of analysis or examination shall be paid by such party as the court may direct.

**Offences committed by a body of persons.**

16. Where an **offence** under this Act or any regulations made thereunder is committed by a body of persons then—

(n) if that body of persons is a body corporate, every person who at the time of commission of the **offence** was a Director, General Manager, Secretary or **other** similar officer of the **body**; or

(b) if that body is not a body corporate, every person who at the time of commission of the **offence** was a member of that body,

shall be deemed to be guilty of that **offence**, unless he proves that the **offence** was committed without his consent or concurrence and that he exercised all such diligence to prevent the commission of such **offence** as he ought to have exercised in the circumstances having regard to the nature of his functions.

Protection for action taken in good faith.

17. No suit, **prosecution** or other legal proceeding shall be instituted against any **person** for any act which is done or purported to be done in good **faith** under **this Act** or any regulations made thereunder.

Regulations.

18. (1) The Minister may make regulations in respect of matters required by **this Act** to be prescribed or in respect of which regulations are authorized to be **made** and in particular in respect of all or any of the following matters : —

(a) to provide that the importation of the insecticide shall be in compliance with **this Act** or any regulations made thereunder ;

(b) ~~the~~ the methods of preparation, packing, storing and ~~testing~~ testing of the insecticide in the interest of, or for the prevention of injury to, ~~the~~ the health of the public; or

(c) the analysis or examination of the insecticide, **procedure** for taking samples of the insecticide and tariff of fees. to be **paid** for the analysis or examination of the insecticide.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval.

(4) Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.

(5) The date on which any regulation shall be deemed to be so rescinded shall be published in the Gazette.

19. In this Act unless the context otherwise requires—

Interpretation.

“ Government analyst ” means the person for the time being holding the office of Government **Analyst and** includes any persons for the time being holding the office of Additional, Deputy, Senior Assistant or Assistant Government Analyst ; **and**

“ local authority ” means any Development Council, Municipal Council, Urban Council, Town Council or Village Council and includes any authority created and established by or under any **law** to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council.